

Off. of Spec. Educ. and Rehab. Services, Education

§ 300.172

(b) *Special rule.* A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(21)(B) and (C))

§ 300.169 Duties.

The advisory panel must—

(a) Advise the SEA of unmet needs within the State in the education of children with disabilities;

(b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;

(d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and

(e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(21)(D))

OTHER PROVISIONS REQUIRED FOR STATE ELIGIBILITY

§ 300.170 Suspension and expulsion rates.

(a) *General.* The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

(1) Among LEAs in the State; or

(2) Compared to the rates for non-disabled children within those agencies.

(b) *Review and revision of policies.* If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementa-

tion of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1412(a)(22))

§ 300.171 Annual description of use of Part B funds.

(a) In order to receive a grant in any fiscal year a State must annually describe—

(1) How amounts retained for State administration and State-level activities under § 300.704 will be used to meet the requirements of this part; and

(2) How those amounts will be allocated among the activities described in § 300.704 to meet State priorities based on input from LEAs.

(b) If a State's plans for use of its funds under § 300.704 for the forthcoming year do not change from the prior year, the State may submit a letter to that effect to meet the requirement in paragraph (a) of this section.

(c) The provisions of this section do not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States.

(Approved by the Office of Management and Budget under control number 1820-0030)

(Authority: 20 U.S.C. 1411(e)(5))

§ 300.172 Access to instructional materials.

(a) *General.* The State must—

(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the FEDERAL REGISTER on July 19, 2006 (71 FR 41084); and

(2) Establish a State definition of “timely manner” for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is not coordinating with the National Instructional Materials Access Center (NIMAC) or (b)(3) and (c)(2) of this section if the State is coordinating with the NIMAC.

(b) *Rights and responsibilities of SEA.* (1) Nothing in this section shall be construed to require any SEA to coordinate with the NIMAC.

(2) If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in § 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

(c) *Preparation and delivery of files.* If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must—

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to—

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(d) *Assistive technology.* In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

(e) *Definitions.* (1) In this section and § 300.210—

(i) *Blind persons or other persons with print disabilities* means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled “An Act to provide books for adult blind,” approved March 3, 1931, 2 U.S.C. 135a;

(ii) *National Instructional Materials Access Center* or *NIMAC* means the center established pursuant to section 674(e) of the Act;

(iii) *National Instructional Materials Accessibility Standard* or *NIMAS* has the meaning given the term in section 674(e)(3)(B) of the Act;

(iv) *Specialized formats* has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

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(Authority: 20 U.S.C. 1412(a)(23), 1474(e))

[71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61306, Oct. 30, 2007]

§ 300.173 Overidentification and disproportionality.

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in § 300.8.

(Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(24))